



## Expert's Corner Paper 2015-01

### Why Contract Management is Indispensable in EPC Project Management

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*Many project organizations underestimate the importance of proper Contract Management when executing projects, and in particular, EPC projects. This paper briefly discusses about the application of Contract Management in different phases of EPC project management, why this role is indispensable, and the role profile of a Contract Manager.*

#### Why Contract Management is different from Legal

Contract Management is generally an action-oriented activity that aims to administer and optimize the project contractual and commercial position. It is somewhat different from the focus of Legal department which is generally to protect and support the company against enterprise liabilities, stakeholder disputes, M&A and joint venture transactions, legal compliance, and other such events. As we shall later discuss, the profile of the Contract Managers is also different from the typical profile of lawyers.

**Contract Management as a function is sometimes misunderstood or undervalued. It is important for EPC project-driven companies to recognize its value**

- Contractual writing – efficiently notating the PMT position in letters, meeting minutes, etc.
- Customer changes – strategically and tactically expand the project revenue / top line,
- Good commercial acumen – negotiate outcomes that improve the project margins,
- Risk averse – safeguard positions that mitigate project and company risks,
- Business exposure – sound awareness of all project functions and their interfaces.

These traits are not exclusive to the Contracts function. Thus, any employee that exhibits the above traits shall be a good source of induction to Contract Management. Indeed Contract Managers often have varied origin and successful Contract

Managers often come from backgrounds (Project Services, Engineering, SCM, others), which may not be Legal.

#### The Contract Management Function

Various EPC companies have successfully adopted different functional structures for Contract Management, such as:

- Legal & Contract
- Project Services & Contract
- SCM and Contract
- Business Development & Contract
- Project Management & Contract

Some Project-driven companies have gone as far as setting up a Contracts department distinct from the Legal department. The Contracts department is generally reporting to the COO and is embedded in the organization's operations, while the Legal department is a corporate function, often reporting to the CEO.

The success measure in the correct placement of a Contract Management function shall be in the development and nurturing of the Contract Management team for the below traits:

- External facing – represent the company as a brand ambassador,
- Contract savvy – effective in applying the Contract as a line of defense,

#### Contract Management during the course of the project

In a project organization, there is a portfolio of various types of projects in two different phases:

- Bid phase,
- Execution phase,

##### Bid Phase

During this phase, the project has not been awarded, and the proposal team shall actively require the following Contract application skills:

1. Review of Contract Terms (indemnities, liabilities, law provisions, and others) and their associated risks to the organization,
2. Review of the Contract's commercial requirements, which may be in supportive attachments to main Contract terms, such as payment and extra work exhibits, project reporting exhibits, schedule dates, others,
3. Consolidation of the exceptions and clarifications made to the Contract (technical, commercial, legal),

and maintenance of same during contract negotiation and until project award,

4. Expertise in negotiating the Contract with the customer.

It is good practice to have your Legal team actively involved in providing the above skills especially for Items 1 & 4 which deal with the organization's liabilities.

The business and administrative aspect of the above skills i.e. Items 2 & 3, should be supported by a Contract Manager, who has the experience in application of similar Contract and customers during project execution.

### **Execution Phase**

In this phase, the Contract has been mutually agreed with the Customer, and is being executed. At this stage the Legal resource do not need to be involved anymore except in case of contract default, dispute, breach or any such major events. Contract Management activities become central. The following describes those activities required during the life cycle of a project:

#### **A. Project Kickoff**

- Perform a controlled distribution of the Contract within the PMT (priced and unpriced copies),
- Engage PMT in Contract awareness discussion and achieve a consensus towards the interpretation and application of the Contract,
- Identify the Contract conditions and their application in mitigating project risks and exploiting project opportunities,
- Establish a working relationship with the Client's contract management team including contractual matters reporting and exchange.

#### **B. Project Contract Administration & Execution**

- Issuance of the Contract project set up documents such as insurances, financial bonds, and others,
- Implement a comprehensive Contract communication process for correspondence, notices, interface documents, notices, and others,
- Execute a robust customer change management process, which covers the creation of customer change orders, status submission and tracking, and negotiation.

#### **C. Other Project Functional Interface**

- Technical – acquire an awareness of the project technical and operation work elements,
- SCM – communicate all Contract requirements for cascade to suppliers,
- Project Forecast – obtain and review cost information during customer change order creation, and provide updates on project revenue changes,

- Planning – converse on Contract completion dates and schedule float impacts due to customer change orders,
- Document Control – monitor the conformity with the Contract requirements i.e. timely document reviews, etc. and raise changes with customer in cases of non-compliance,
- Project Management – attend all customer commercial meetings and actively safeguard the project Contract rights and obligations,
- Dispute Management – engage as project liaison with the Legal team during customer Contract disagreements.

#### **D. Project Close Out**

- Ensure all Contract completion conditions are met and commercial issues resolved.

### **Conclusion**

**Contract Management is different from Legal in terms of focus and in terms of profile**

Based on the complexity and size of the projects, the project application extent of Contract Management shall accordingly vary i.e. a mega project may need multiple Contract Managers, whilst a single Contract Manager can manage multiple small projects.

All EPC projects have:

- Customers,
- Contracts - Master Agreement, PO conditions, project specific Contract, etc,
- Revenue expansion needs.

All EPC projects can benefit from Contract Management. Contract Management as a function is sometimes misunderstood or undervalued. It is important for EPC project-driven companies to recognize its value and foster the development of successful Contract managers.

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### **Terminology & Abbreviations**

- Contract – Customer supplied terms, work specifications and other supporting exhibits
- EPC – Engineering, Procurement, Construction
- Legal – Company Legal function
- PMT – Project Team
- Proposal – The team responsible for bidding the project
- SCM – Supply Chain Management
- Work – Contract described work and service delivery

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